

## BEFORE THE CONTRACTORS BOARD

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## STATE OF IDAHO

MAY 29 2009

OCCUPATIONAL LICENSES

In the Matter of the Registration of: )  
 ) Case No. CON-2009-10  
 COLIN STEWART CONSTRUCTION, )  
 Registration No. RCE-17096, ) **FINDINGS OF FACT,**  
 ) **CONCLUSIONS OF LAW AND**  
 Respondent. ) **RECOMMENDED ORDER**  
 )

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Having reviewed the Complaint and other documents in this matter, the Hearing Officer hereby enters the following Findings of Fact, Conclusions of Law, and Recommended Order:

**FINDINGS OF FACT**

1. Colin Stewart Construction ("Respondent") is registered with the Board under Registration No. RCE-17096 to engage in the practice of contracting. Respondent's registration expired on June 27, 2007, and Respondent's registration was canceled as of June 28, 2007. Respondent has not renewed its registration; however, pursuant to Idaho Code § 67-2614, Respondent retains the right to renew its registration for up to five (5) years after cancellation by paying the required fees.

2. On March 11, 2009, a formal administrative Complaint was filed in this matter with the Board. Said Complaint is expressly incorporated herein and made a part hereof.

3. Copies of the Complaint, along with the Notification of Procedural Rights, were sent to Respondent on March 27, 2009, by means of the United States Mail, postage prepaid, both by certified mail, return receipt requested, at the most recent known address for Respondent:

Colin Stewart Construction  
 Colin Stewart  
 5652 Colburn Culver  
 Sandpoint, ID 83864

4. The certified mail envelope and regular mail envelope were returned to the Bureau on April 3, 2009, and marked “no such number” and “unable to forward” by the post office. Attempts to locate a current address for Respondent were unsuccessful.

5. The Notification of Procedural Rights informed Respondent that, under statutes and rules applicable to such proceedings before the Board, Respondent needed to file a formal Answer to the Complaint within twenty-one (21) days of service of the Complaint and that failure to timely file an Answer to the Complaint or otherwise defend against the action would constitute a default and would be sufficient grounds for proceeding administratively against Respondent’s registration without the necessity of conducting a hearing.

6. On May 8, 2009, a Notice of Proposed Default Order and Default Order, along with another copy of the Complaint and Notification of Procedural Rights, were sent to Respondent by means of the United States Mail, postage prepaid, both by certified mail, return receipt requested, and by regular mail, at the following address:

Colin Stewart Construction  
Colin Stewart  
5652 Colburn Culver  
Sandpoint, ID 83864

7. Respondent failed to contest entry of the proposed Default Order within seven (7) days of service of the Notice of Proposed Default Order.

8. Concurrent herewith, a Default Order was entered against Respondent. Therefore, the allegations contained in the Complaint on file in this matter are admitted as true without the necessity of conducting a hearing.

9. As detailed in the incorporated Complaint, Respondent did do the following:

a. In the fall of 2007, after Respondent’s registration had expired and had not been renewed, J.W. hired Respondent to do repairs on the roof of an earth-sheltered home. In November 2007, after Respondent completed the repairs, the roof

began leaking. Respondent attempted to complete further repairs from March to May 2008.

b. J.W. discovered the following problems with Respondent's roof repairs:

i. Rather than hauling crushed rock and bentonite from the roof, Respondent mixed it with the topsoil that was to be replaced after repairs were made, causing the bentonite to create a gooey mess and making grading of the topsoil extremely difficult;

ii. Respondent left numerous areas of the roof with no protective insulation, allowing the membrane to be punctured easily;

iii. Respondent lapped edges of adjacent boards leaving unsupported spaces and causing boards to crack under the weight of earth or people;

iv. Respondent used 1" insulation scraps instead of the 2" requested insulation, creating an irregular surface;

v. Respondent stretched the roofing membrane too tightly over the cant strip causing flashing to press upon the membrane and puncture it; and

vi. Respondent allowed sharp objects under the roofing membrane which also punctured the membrane.

### **CONCLUSIONS OF LAW**

1. As a registered contractor in the State of Idaho, Respondent is subject to the jurisdiction of the Board and to the provisions of title 54, chapter 52, Idaho Code.

2. The Complaint was sent to Respondent at Respondent's most recently known address. Respondent was duly and lawfully given notice of proceedings against its registration pursuant to the provisions of IDAPA 04.11.01.055.

3. Respondent's failure to plead or otherwise defend in this action authorizes the Board, pursuant to Idaho Code § 67-5242(4) and IDAPA 04.11.01.700, to enter an Order of Default which is as lawful as if all the allegations in the Complaint were proved

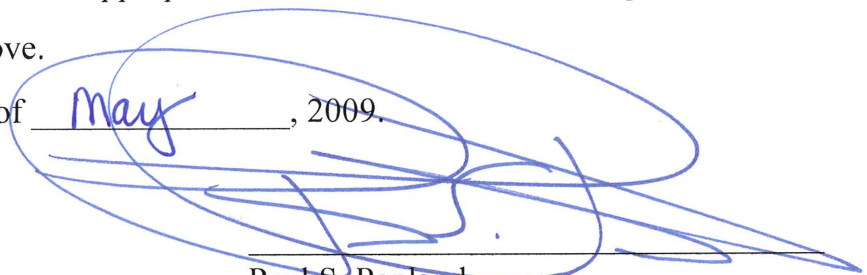
or admitted at a hearing.

4. Respondent's acts as described in the Complaint constitute grounds for discipline against Respondent's registration to practice contracting under the laws governing the practice of contracting in the State of Idaho, specifically Idaho Code §§ 54-5204(1) (unlawful to engage in contracting or hold oneself out as a contractor unless properly registered), 54-5215(2)(a) (contractors shall not violate the Idaho Contractor Registration Act), and 54-5215(2)(h) (contractors shall not fail to meet the generally accepted standard of care in the practice of construction).

### ORDER

Based upon the foregoing, it is the recommendation of the Hearing Officer that the Board take such action as it deems appropriate consistent with the Findings of Fact and Conclusions of Law stated above.

DATED this 27<sup>th</sup> day of May, 2009.



Paul S. Penland  
Hearing Officer

### NOTICE OF DUE PROCESS RIGHTS

This is a recommended order of the Hearing Officer. It will not become final without action of the Board. Any party may file a petition for reconsideration of this recommended order with the Hearing Officer issuing the order within fourteen (14) days of the service date of this order. The Hearing Officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Idaho Code § 67-5243(3).

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding.



Written briefs in support of or taking exceptions to the recommended order shall be filed with the Board. Opposing parties shall have twenty-one (21) days to respond. The Board may schedule oral argument in the matter before issuing a final order. The Board will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties and for good cause shown. The Board may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

### CERTIFICATE OF SERVICE

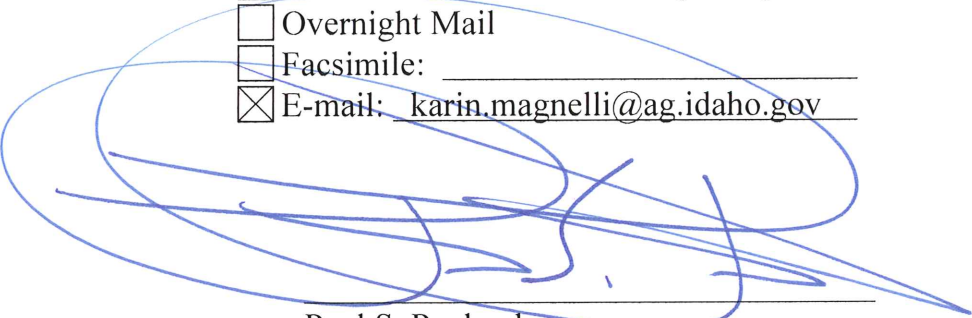
I HEREBY CERTIFY that on this 27<sup>th</sup> day of May, 2009, I caused to be served a true and correct copy of the foregoing by the following method to:

Colin Stewart Construction  
Colin Stewart  
5652 Colburn Culver  
Sandpoint, ID 83864

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_

Karin Magnelli  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☒ E-mail: karin.magnelli@ag.idaho.gov



Paul S. Penland  
Hearing Officer